IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 131 OF 1993

Shikshan Prasarak Mandal Khatav
Through its Secretary
Shri Mukund Khando Wagh ..Petitioner

V/S

N.B. Sawant
Since deceased by his legal heirs
Ratnamala @ Vijaya Namdeo Sawant
& ors. ..Respondents

Mr. S.G. Deshmukh for petitioner.
None for Respondents though served.

CORAM : A.P. DESHPANDE, J.
DATE : 17TH JANUARY, 2007.

JUDGMENT

1. Heard learned counsel for the petitioner. Learned counsel for the Respondent absent. This petition has a chakered history.

2. The School Management has challenged the judgment and order passed by the School Tribunal dated 1-10-1992 allowing the Appeal filed by the Respondent herein, set aside the order of termination and granted reinstatement with continuity of service and full backwages till the date of superannuation.

3. At the time of termination, the Respondent was working as Assistant Teacher in Hanuman Vidyalaya, Bhosare. Initially in the year 1977 on the allegations of serious misconduct, after holding an enquiry the Respondent was terminated from the service. Aggrieved thereby the Respondent filed Appeal before the Deputy Director of Education under Secondary School Code. The Dy. Director, Education, allowed the Appeal filed by the Respondent. Against the order passed by the Dy. Director of Education, the present petitioner filed Appeal before the Director of Education and the Director of Education allowed the Appeal. The Respondent No. 1 herein filed the writ petition bearing No. 1347 of 1980 against the order passed by the Director of Education before this court and this court allowed the writ petition vide Judgment dated 27/28th November, 1980. The present petitioner filed Special Leave Petition before the Supreme Court and the Supreme Court disposed of the said S.L.P. on 17-9-1982 by granting liberty to the petitioner to hold fresh enquiry. Respondent No. 1 was thereafter reinstated in service on 8-12-1982 and immediately thereafter a second enquiry commenced. This enquiry culminated in terminating the service of the Respondent by order of termination dated 18-4-1986. In the intervening period and during the pendency of the enquiry the

Respondent had filed a Civil Suit with a view to stall the enquiry and Miscellaneous Appeal was also carried and thereafter the Revision was filed in this court. But the said proceedings have no bearing an issue involved in the present petition and hence not referred to in great details. What is relevant to note is that the Respondent No. 1 has expired in the year 1992. The Respondent No. 1 had reached the age of superannuation on 31-7-1988. For all practical purposes the subject matter of the present petition would be in relation to that part of the order passed by the Tribunal granting full backwages from the date of the termination till he attained the age of the superannuation i.e. 31-7-1988. Learned counsel for the petitioner fairly states that as the Respondent No. 1 had expired the order granting reinstatment which would have the effect of notional continuance of Respondent No. 1 in service need not be disturbed and the order directing the payment of backwages deserves to be quashed and set aside as the impugned order passed by the Tribunal does not need to be interfered with. The Respondent No. 1 has also attained the age of superannuation on 31-7-1988 so that the Respondent No.1 would get the pension and his wife the family pension if permissible under the law. I

do not propose to disturb the order to the

extent it grants reinstatement with continuity of service and all incidental and ancillary benefit flowing therefrom. However the grant of full backwages for the period in question is based on no material whatsoever. The Tribunal has not discussed anything in regard to the quantum of backwages. Learned counsel for the petitioner submits that hardly the Respondent No. 1 has worked in the school as the litigation was going on since prior to the year 1978 till date. It is submitted by the learned counsel that the Respondent No. 1 was gainfully employed during the period in question. The original respondent has filed affidavit on record but the same is silent with regard to the gainful employment of the respondent. The Legal representatives were brought on record. Having regard to the totality of the circumstances the impugned order passed by the Tribunal which grants reinstatement with continuity of service and full backwages needs to be interfered with only to the extent of grant of full backwages. I am of the view that interest of justice would be served by modifying the order passed by the Tribunal by reducing the amount of full backwages to 50% of the backwages. The petitioner has placed on record a chart indicating

the backwages. The same is taken on record. In all fairness the learned counsel for the petitioner

submits that the petitioner will deposit 50% of the backwages in Tribunal. On instructions from the petitioner learned counsel states that he is not challenging the rest of the order.

4. The present writ petition is partly allowed. The order passed by the Tribunal which is impugned in this petition is modified to the extent of reducing the amount of full backwages, which is directed to be paid by the petitioner to the Respondent No. 1, from 100% to 50%. The rest of the order shall continue to hold good. Rule made absolute in above terms. No order as to costs.

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(A.P. DESHPANDE, J.)